MUTUAL FILM CORPORATION *v.* INDUSTRIAL COMMISSION OF OHIO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

No. 456. Argued January 6, 7, 1915.—Decided February 23, 1915.

Where provisions for censorship of moving pictures relate only to films intended for exhibition within the State and they are distributed to persons within the State for exhibition, there is no burden imposed on interstate commerce.

The doctrine of original package does not extend to moving picture films transported, delivered and used as shown in the record in this case, although manufactured in, and brought from, another State.

Moving picture films brought from another State to be rented or sold by the consignee to exhibitors, are in consumption and mingled as much as from their nature they can be with other property of the State and subject to its otherwise valid police regulation, even before the consignee delivers to the exhibitor.

The judicial sense, supporting the common sense of this country, sustains the exercise of the police power of regulation of moving picture exhibitions.

The exhibition of moving pictures is a business, pure and simple, originated and conducted for profit like other spectacles, and not to be regarded as part of the press of the country or as organs of public opinion within the meaning of freedom of speech and publication guaranteed by the constitution of Ohio.

This court will not anticipate the decision of the state court as to the application of a police statute of the State to a state of facts not involved in the record of the case before it. *Quære*, whether moving pictures exhibited in places other than places of amusement should fall within the provisions of the censorship statute of Ohio.

While administration and legislation are distinct powers and the line that separates their exercise is not easily defined, the legislature must declare the policy of the law and fix the legal principles to control in given cases, and an administrative body may be clothed with power to ascertain facts and conditions to which such policy and principles apply.

It is impossible to exactly specify such application in every instance, and the general terms of censorship, while furnishing no exact standard

of requirements may get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct.

Whether provisions in a state statute clothing a board or Congress composed of officers from that and other States with power, amount to such delegation of legislative power as to render the provisions unconstitutional, will not be determined by this court in a case in which it appears that such Congress is still non-existent.

The moving picture censorship act of Ohio of 1913 is not in violation of the Federal Constitution or the constitution of the State of Ohio, either as depriving the owners of moving pictures of their property without due process of law or as a burden on interstate commerce, or as abridging freedom and liberty of speech and opinion, or as delegating legislative authority to administrative officers.

215 Fed. Rep. 138, affirmed.

APPEAL from an order denying appellant, herein designated complainant, an interlocutory injunction sought to restrain the enforcement of an act of the General Assembly of Ohio passed April 16, 1913 (103 Ohio Laws, 399), creating under the authority and superintendence of the Industrial Commission of the State a board of censors of motion picture films. The motion was presented to three judges, upon the bill, supporting affidavits and some oral testimony.

The bill is quite voluminous. It makes the following attacks upon the Ohio statute: (1) The statute is in violation of §§ 5, 16 and 19 of article 1 of the constitution of the State in that it deprives complainant of a remedy by due process of law by placing it in the power of the board of censors to determine from standards fixed by itself what films conform to the statute, and thereby deprives complainant of a judicial determination of a violation of the law. (2) The statute is in violation of articles 1 and 14 of the amendments to the Constitution of the United States, and of § 11 of article 1 of the constitution of Ohio in that it restrains complainant and other persons from freely writing and publishing their sentiments. (3) It attempts to give the board of censors legislative power,

which is vested only in the General Assembly of the State, subject to a referendum vote of the people, in that it gives to the board the power to determine the application of the statute without fixing any standard by which the board shall be guided in its determination, and places it in the power of the board, acting with similar boards in other States, to reject, upon any whim or caprice, any film which may be presented, and power to determine the legal status of the foreign board or boards, in conjunction with which it is empowered to act.

The business of the complainant and the description, use, object and effect of motion pictures and other films contained in the bill, stated narratively, are as follows: Complainant is engaged in the business of purchasing, selling and leasing films, the films being produced in other States than Ohio, and in European and other foreign countries. The film consists of a series of instantaneous photographs or positive prints of action upon the stage or in the open. By being projected upon a screen with great rapidity there appears to the eye an illusion of motion. They depict dramatizations of standard novels, exhibiting many subjects of scientific interest, the properties of matter, the growth of the various forms of animal and plant life, and explorations and travels; also events of historical and current interest—the same events which are described in words and by photographs in newspapers, weekly periodicals, magazines and other publications, of which photographs are promptly secured a few days after the events which they depict happen; thus regularly furnishing and publishing news through the medium of motion pictures under the name of "Mutual Weekly." Nothing is depicted of a harmful or immoral character.

The complainant is selling and has sold during the past year for exhibition in Ohio an average of fifty-six positive prints of films per week to film exchanges doing business in that State, the average value thereof being the sum of

$100, aggregating $6,000 per week or $300,000 per annum.

In addition to selling films in Ohio complainant has a film exchange in Detroit, Michigan, from which it rents or leases large quantities to exhibitors in the latter State and in Ohio. The business of that exchange and those in Ohio is to purchase films from complainant and other manufacturers of films and rent them to exhibitors for short periods at stated weekly rentals. The amount of rentals depends upon the number of reels rented, the frequency of the changes of subject, and the age or novelty of the reels rented. The frequency of exhibition is described. It is the custom of the business, observed by all manufacturers, that a subject shall be released or published in all theaters on the same day, which is known as release day, and the age or novelty of the film depends upon the proximity of the day of exhibition to such release day. Films so shown have never been shown in public, and the public to whom they appeal is therefore unlimited. Such public becomes more and more limited by each additional exhibition of the reel.

The amount of business in renting or leasing from the Detroit exchange for exhibition in Ohio aggregates the sum of $1,000 per week.

Complainant has on hand at its Detroit exchange at least 2,500 reels of films which it intends to and will exhibit in Ohio and which it will be impossible to exhibit unless the same shall have been approved by the board of censors. Other exchanges have films, duplicate prints of a large part of complainant's films, for the purpose of selling and leasing to parties residing in Ohio, and the statute of the State will require their examination and the payment of a fee therefor. The amounts of complainant's purchases are stated, and that complainant will be compelled to bear the expense of having them censored because its customers will not purchase or hire uncensored films.

The business of selling and leasing films from its offices

outside of the State of Ohio to purchasers and exhibitors within the State is interstate commerce, which will be seriously burdened by the exaction of the fee for censorship, which is not properly an inspection tax and the proceeds of which will be largely in excess of the cost of enforcing the statute, and will in no event be paid to the Treasury of the United States.

The board has demanded of complainant that it submit its films to censorship and threatens, unless complainant complies with the demand, to arrest any and all persons who seek to place on exhibition any film not so censored or approved by the censor congress on and after November 4, 1913, the date to which the act was extended. It is physically impossible to comply with such demand and physically impossible for the board to censor the films with such rapidity as to enable complainant to proceed with its business, and the delay consequent upon such examination would cause great and irreparable injury to such business and would involve a multiplicity of suits.

There were affidavits filed in support of the bill and some testimony taken orally. One of the affidavits showed the manner of shipping and distributing the films and was as follows:

"The films are shipped by the manufacturers to the film exchanges enclosed in circular metal boxes, each of which metal boxes is in turn enclosed in a fibre or wooden container. The film is in most cases wrapped around a spool or core in a circle within the metal case. Sometimes the film is received by the film exchange wound on a reel, which consists of a cylindrical core with circular flanges to prevent the film from slipping off the core, and when so wound on the reel is also received in metal boxes. as above described. When the film is not received on a reel, it is, upon receipt, taken from the metal box, wound on a reel and then replaced in the metal box. So wound and so enclosed in metal boxes, the films are shipped by the film

exchanges to their customers. The customers take the film as it is wound on the reel from the metal box and exhibit the pictures in their projecting machines, which are so arranged as to permit of the unwinding of the film from the reel on which it is shipped. During exhibition, the reel of film is unwound from one reel and rewound in reverse order on a second reel. After exhibition, it must be again unwound from the second reel from its reverse position and replaced on the original reel in its proper position. After the exhibitions for the day are over, the film is replaced in the metal box and returned to the film exchange, and this process is followed from day to day during the life of the film.

"All shipments of films from manufacturers to film exchanges, from film exchanges to exhibitors, and from exhibitors back to film exchanges, are made in accordance with regulations of the Interstate Commerce Commission, one of which provides as follows:

"'Moving picture films must be placed in metal cases, packed in strong and tight wooden boxes or fibrewood pails.'"

Another of the affidavits divided the business as follows:

"The motion-picture business is conducted in three branches; that is to say, by manufacturers, distributors, and exhibitors, the distributors being known as film exchanges. . . . Film is manufactured and produced in lengths of about one thousand feet, which are placed on reels, and the market price per reel of film of a thousand feet in length is at the rate of ten cents per foot, or one hundred dollars. Manufacturers do not sell their film direct to exhibitors, but sell to film exchanges, and the film exchanges do not resell the film to exhibitors, but rent it out to them."

After stating the popularity of motion pictures and the demand of the public for new ones and the great expense their purchase would be to exhibitors, the affidavit proceeds as follows:

"For that reason film exchanges came into existence, and film exchanges such as the Mutual Film Corporation are like clearing houses or circulating libraries, in that they purchase the film and rent it out to different exhibitors. One reel of film being made to-day serves in many theatres from day to day until it is worn out. The film exchange, in renting out the films, supervises their circulation."

An affidavit was filed made by the "general secretary of the national board of censorship of motion pictures, whose office is at No. 50 Madison Avenue, New York City." The "national board," it is averred, "is an organization maintained by voluntary contributions, whose object is to improve the moral quality of motion pictures." Attached to the affidavit was a list of subjects submitted to the board which are "classified according to the nature of said subjects into scenic, geographic, historical, classic, educational and propagandistic."

Mr. William B. Sanders and *Mr. Walter N. Seligsberg*, with whom *Mr. Harold T. Clark* was on the brief, for appellants:

The Federal courts have jurisdiction to decide all the constitutional questions, whether Federal or state, presented by the records. *Ohio R. & W. R. R.* v. *Ditley*, 232 U. S. 578; *Siler* v. *Louis. & Nash. R. R.*, 213 U. S. 175, 191.

Appellants are entitled to invoke the protection of the constitutional guaranties of freedom of publication and liberty of the press as fully as any person with whom they do business could do. *Savage* v. *Jones*, 225 U. S. 501, at pp. 519–521; *Collins* v. *New Hampshire*, 171 U. S. 30; *Caldwell* v. *North Carolina*, 187 U. S. 622; *Crenshaw* v. *Arkansas*, 227 U. S. 389, 397; *Kahn* v. *Cincinnati Times Star*, 10 Oh. Dec. 599, aff'd 52 Oh. St. 662.

Appellants' motion pictures are publications and entitled as such to the protection afforded by the freedom

of publication guaranty contained in § 11, Art. I of the Ohio constitution. *Kalem* v. *Harper Bros.*, 222 U. S. 55, 60; *Harper Bros.* v. *Kalem*, 169 Fed. Rep. 61; *Daly* v. *Webster*, 56 Fed. Rep. 483; *Dailey* v. *San Francisco Superior Court*, 112 California, 94; *United States* v. *Williams*, 3 Fed. Rep. 484; *United States* v. *Loftis*, 12 Fed. Rep. 671; *LeRoy* v. *Jamison*, 15 Fed. Cas. 373.

Appellants' motion pictures constitute part of "the press" of Ohio within the comprehensive meaning of that term. They play an increasingly important part in the spreading of knowledge and the molding of public opinion upon every kind of political, educational, religious, economic and social question. The regular publication of new films under the name of "Mutual Weekly" is clearly a press enterprise.

See § 11, Art I, Ohio constitution, providing that "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

The Censorship Law violates § 11 in that it imposes a previous restraint upon freedom of publication, which applies to all publications whether made through the medium of speech, writing, acting on the stage, motion pictures, or through any other mode of expression now known or which may hereafter be discovered or invented, and upon the liberty of the press. *Dopp* v. *Doll*, 9 O. Dec. Rep. 428; *Judson* v. *Zurhorst*, 10 O. C. C. (N. S.) 289; *S. C.*, aff'd, 78 O. S. 446; Cooley's Const. Law, 3d ed., Ch. XIV, § V, especially 309; Story on the Constitution, 5th ed., § 1182; Black's Const. Law, 3d ed., 658; Paterson on Liberty of Press, pp. 10 and 41; Cooley's Blackstone, 4th ed., p. 1326; *Patterson* v. *Colorado*, 205 U. S. 454, 462; *Dailey* v. *Superior Court*, 112 California, 94; *Ex parte Neil*, 32 Texas Criminal Court, 275; *Cowan* v. *Fairbrother* (N. C.), 32 L. R. A. 829, 836; *Ulster Square Dealer*

v. *Fowler*, 111 N. Y. Supp. 16; *Life Association* v. *Boogher*, 3 Mo. App. 173; *Clothing Co.* v. *Watson*, 168 Missouri, 153; *Atchison &c. Ry.* v. *Brown*, 80 Kansas, 312; Rawle on Constitution, 2d ed., pp. 123, 124; *Levert* v. *Daily States Pub. Co.*, 123 Louisiana, 594; *Sweeney* v. *Baker*, 13 W. Va. 182; *Williams Printing Co.* v. *Saunders*, 113 Virginia, 156; *Williams* v. *Black*, 24 S. Dak. 501.

The constitutional guaranties are not limited to forms of publication known at the time the Constitution was adopted. *Hurtado* v. *California*, 110 U. S. 516, 530; *Boyd* v. *United States*, 116 U. S. 746, 752; *Holden* v. *Hardy*, 169 U. S. 366, 385; *In re Debs*, 158 U. S. 164, 591.

The censorship law is not sustainable as a plan for the regulating of theatres by a system of granting or withholding licenses, because appellants' films are exhibited in churches, libraries, factories, store windows, before open air gatherings, etc. Moreover, even as to theaters, the surrender of the constitutional guaranty of freedom of publication could not be required as a condition precedent to the granting of a license. *Dist. of Col.* v. *Saville*, 8 D. C. App. 581; *People* v. *Steele*, 231 Illinois, 340; *Chicago* v. *Weber*, 246 Illinois, 304; *Indianapolis* v. *Miller*, 168 Indiana, 285; *William Fox Co.* v. *McClellan*, 62 Misc. 100; *Ex parte Quarg*, 84 Pac. Rep. 766; *Empire City Trotting Club* v. *State Racing Commission*, 190 N. Y. 31.

The censorship law cannot be sustained as a proper exercise of the police power, because it directly contravenes the constitutional guaranties of freedom of publication and liberty of the press. *Board of Health* v. *Greenville*, 86 Oh. St. 1, 21; *Lawton* v. *Steele*, 152 U. S. 133, 137; *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Sperry ex rel.* v. *Sperry & Hutchinson*, 94 Nebraska, 785.

The Ohio Motion Picture Censorship violates the provisions of § 11, Art. I of the constitution of Ohio, in that it attempts to delegate legislative power. *Harmon* v. *State*, 66 O. S. 249; *Toledo* v. *Winters*, 21 O. Dec. 171;

Ex parte Sam Lewis, 14 O. N. P. (N. S.) 609; *Noel* v. *People*, 187 Illinois, 591; *Kerr* v. *Ross*, 5 App. D. C. 441; *State* v. *Burdge* (Wis.), 37 L. R. A. 157, 161; *Mathews* v. *Murphy*, 63 S. W. Rep. 785.

Mr. Robert M. Morgan, with whom *Mr. Timothy S. Hogan*, Attorney General of the State of Ohio, *Mr. James I. Boulger* and *Mr. Clarence D. Laylin* were on the brief, for appellees.

See brief on behalf of State of Kansas in No. 597, *post*, p. 253.

By leave of court, *Mr. Waldo G. Morse* and *Mr. Jacob Schechter* filed a brief as *amici curiæ* in behalf of the Universal Film Manufacturing Company.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

Complainant directs its argument to three propositions: (1) The statute in controversy imposes an unlawful burden on interstate commerce; (2) it violates the freedom of speech and publication guaranteed by § 11, art. 1, of the constitution of the State of Ohio; [1] and (3) it attempts to delegate legislative power to censors and to other boards to determine whether the statute offends in the particulars designated.

It is necessary to consider only §§ 3, 4 and 5. Section 3 makes it the duty of the board to examine and censor motion picture films to be publicly exhibited and displayed

[1] "Section 11. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted."

in the State of Ohio. The films are required to be exhibited to the board before they are delivered to the exhibitor for exhibition, for which a fee is charged.

Section 4. "Only such films as are in the judgment and discretion of the board of censors of a moral, educational or amusing and harmless character shall be passed and approved by such board." The films are required to be stamped or designated in a proper manner.

Section 5. The board may work in conjunction with censor boards of other States as a censor congress, and the action of such congress in approving or rejecting films shall be considered as the action of the state board, and all films passed, approved, stamped and numbered by such congress, when the fees therefor are paid shall be considered approved by the board.

By § 7 a penalty is imposed for each exhibition of films without the approval of the board, and by § 8 any person dissatisfied with the order of the board is given the same rights and remedies for hearing and reviewing, amendment or vacation of the order "as is provided in the case of persons dissatisfied with the orders of the industrial commission."

The censorship, therefore, is only of films intended for exhibition in Ohio, and we can immediately put to one side the contention that it imposes a burden on interstate commerce. It is true that according to the allegations of the bill some of the films of complainant are shipped from Detroit, Michigan, but they are distributed to exhibitors, purchasers, renters and lessors in Ohio, for exhibition in Ohio, and this determines the application of the statute. In other words, it is only films which are "to be publicly exhibited and displayed in the State of Ohio" which are required to be examined and censored. It would be straining the doctrine of original packages to say that the films retain that form and composition even when unrolling and exhibiting to audiences, or, being ready for

renting for the purpose of exhibition within the State, could not be disclosed to the state officers. If this be so, whatever the power of the State to prevent the exhibition of films not approved—and for the purpose of this contention we must assume the power is otherwise plenary—films brought from another State, and only because so brought, would be exempt from the power, and films made in the State would be subject to it. There must be some time when the films are subject to the law of the State, and necessarily when they are in the hands of the exchanges ready to be rented to exhibitors or have passed to the latter, they are in consumption, and mingled as much as from their nature they can be with other property of the State.

It is true that the statute requires them to be submitted to the board before they are delivered to the exhibitor, but we have seen that the films are shipped to "exchanges" and by them rented to exhibitors, and the "exchanges" are described as "nothing more or less than circulating libraries or clearing houses." And one film "serves in many theatres from day to day until it is worn out."

The next contention is that the statute violates the freedom of speech and publication guaranteed by the Ohio constitution. In its discussion counsel have gone into a very elaborate description of moving picture exhibitions and their many useful purposes as graphic expressions of opinion and sentiments, as exponents of policies, as teachers of science and history, as useful, interesting, amusing, educational and moral. And a list of the "campaigns," as counsel call them, which may be carried on is given. We may concede the praise. It is not questioned by the Ohio statute and under its comprehensive description, "campaigns" of an infinite variety may be conducted. Films of a "moral, educational or amusing and harmless character shall be passed and approved" are the words of the statute. No exhibition, therefore, or "campaign"

of complainant will be prevented if its pictures have those qualities. Therefore, however missionary of opinion films are or may become, however educational or entertaining, there is no impediment to their value or effect in the Ohio statute. But they may be used for evil, and against that possibility the statute was enacted. Their power of amusement and, it may be, education, the audiences they assemble, not of women alone nor of men alone, but together, not of adults only, but of children, make them the more insidious in corruption by a pretense of worthy purpose or if they should degenerate from worthy purpose. Indeed, we may go beyond that possibility. They take their attraction from the general interest, eager and wholesome it may be, in their subjects, but a prurient interest may be excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences. And not only the State of Ohio but other States have considered it to be in the interest of the public morals and welfare to supervise moving picture exhibitions. We would have to shut our eyes to the facts of the world to regard the precaution unreasonable or the legislation to effect it a mere wanton interference with personal liberty.

We do not understand that a possibility of an evil employment of films is denied, but a freedom from the censorship of the law and a precedent right of exhibition are asserted, subsequent responsibility only, it is contended, being incurred for abuse. In other words, as we have seen, the constitution of Ohio is invoked and an exhibition of films is assimilated to the freedom of speech, writing and publication assured by that instrument and for the abuse of which only is there responsibility, and, it is insisted, that as no law may be passed "to restrain the liberty of speech or of the press," no law may be passed to subject moving pictures to censorship before their exhibition.

We need not pause to dilate upon the freedom of opinion and its expression, and whether by speech, writing or printing. They are too certain to need discussion—of such conceded value as to need no supporting praise. Nor can there be any doubt of their breadth nor that their underlying safeguard is, to use the words of another, "that opinion is free and that conduct alone is amenable to the law."

Are moving pictures within the principle, as it is contended they are? They, indeed, may be mediums of thought, but so are many things. So is the theatre, the circus, and all other shows and spectacles, and their performances may be thus brought by the like reasoning under the same immunity from repression or supervision as the public press,—made the same agencies of civil liberty.

Counsel have not shrunk from this extension of their contention and cite a case in this court where the title of drama was accorded to pantomime;[1] and such and other spectacles are said by counsel to be publications of ideas, satisfying the definition of the dictionaries,—that is, and we quote counsel, a means of making or announcing publicly something that otherwise might have remained private or unknown,—and this being peculiarly the purpose and effect of moving pictures they come directly, it is contended, under the protection of the Ohio constitution.

The first impulse of the mind is to reject the contention. We immediately feel that the argument is wrong or strained which extends the guaranties of free opinion and speech to the multitudinous shows which are advertised on the bill-boards of our cities and towns and which regards them as emblems of public safety, to use the words of Lord Camden, quoted by counsel, and which seeks to

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[1] *Kalem* v. *Harper Bros.*, 222 U. S. 55.

bring motion pictures and other spectacles into practical and legal similitude to a free press and liberty of opinion.

The judicial sense supporting the common sense of the country is against the contention. As pointed out by the District Court, the police power is familiarly exercised in granting or withholding licenses for theatrical performances as a means of their regulation. The court cited the following cases: *Marmet* v. *State*, 45 Ohio, 63, 72, 73; *Baker* v. *Cincinnati*, 11 Ohio St. 534; *Commonwealth* v. *McGann*, 213 Massachusetts, 213, 215; *People* v. *Steele*, 231 Illinois, 340, 344, 345.

The exercise of the power upon moving picture exhibitions has been sustained. *Greenberg* v. *Western Turf Ass'n*, 148 California, 126; *Laurelle* v. *Bush*, 17 Cal. App. 409; *State* v. *Loden*, 117 Maryland, 373; *Block* v. *Chicago*, 239 Illinois, 251; *Higgins* v. *Lacroix*, 119 Minnesota, 145. See also *State* v. *Morris*, 76 Atl. Rep. 479; *People* v. *Gaynor*, 137 N. Y. S. 196, 199; *McKenzie* v. *McClellan*, 116 N. Y. S. 645, 646.

It seems not to have occurred to anybody in the cited cases that freedom of opinion was repressed in the exertion of the power which was illustrated. The rights of property were only considered as involved. It cannot be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio constitution, we think, as part of the press of the country or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known, vivid, useful and entertaining no doubt, but, as we have said, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition. It was this capability and power, and it may be in experience of them, that induced the State of Ohio, in addition to prescribing penalties for immoral exhibitions, as it does in its Criminal

Code, to require censorship before exhibition, as it does by the act under review. We cannot regard this as beyond the power of government.

It does not militate against the strength of these considerations that motion pictures may be used to amuse and instruct in other places than theatres—in churches, for instance, and in Sunday schools and public schools. Nor are we called upon to say on this record whether such exceptions would be within the provisions of the statute nor to anticipate that it will be so declared by the state courts or so enforced by the state officers.

The next contention of complainant is that the Ohio statute is a delegation of legislative power and void for that if not for the other reasons charged against it, which we have discussed. While administration and legislation are quite distinct powers, the line which separates exactly their exercise is not easy to define in words. It is best recognized in illustrations. Undoubtedly the legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution.

The objection to the statute is that it furnishes no standard of what is educational, moral, amusing or harmless, and hence leaves decision to arbitrary judgment, whim and caprice; or, aside from those extremes, leaving it to the different views which might be entertained of the effect of the pictures, permitting the "personal equation" to enter, resulting "in unjust discrimination against some propagandist film," while others might be approved without question. But the statute by its provisions guards against such variant judgments, and its terms, like other

general terms, get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile. Upon such sense and experience, therefore, the law properly relies. This has many analogies and direct examples in cases, and we may cite *Gundling* v. *Chicago*, 177 U. S. 183; *Red "C" Oil Manufacturing Co.* v. *North Carolina*, 222 U. S. 380; *Bridge Co.* v. *United States*, 216 U. S. 177; *Butfield* v. *Stranahan*, 192 U. S. 470. See also *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86. If this were not so, the many administrative agencies created by the state and National governments would be denuded of their utility and government in some of its most important exercises become impossible.

To sustain the attack upon the statute as a delegation of legislative power, complainant cites *Harmon* v. *State*, 66 Ohio St. 249. In that case a statute of the State committing to a certain officer the duty of issuing a license to one desiring to act as an engineer if "found trustworthy and competent," was declared invalid because, as the court said, no standard was furnished by the General Assembly as to qualification, and no specification as to wherein the applicant should be trustworthy and competent, but all was "left to the opinion, finding and caprice of the examiner." The case can be distinguished. Besides, later cases have recognized the difficulty of exact separation of the powers of government, and announced the principle that legislative power is completely exercised where the law "is perfect, final and decisive in all of its parts, and the discretion given only relates to its execution." Cases are cited in illustration. And the principle finds further illustration in the decisions of the courts of lesser authority but which exhibit the juridical sense of the State as to the delegation of powers.

Section 5 of the statute, which provides for a censor

congress of the censor board and the boards of other States, is referred to in emphasis of complainant's objection that the statute delegates legislative power. But, as complainant says, such congress is "at present non-existent and nebulous," and we are, therefore, not called upon to anticipate its action or pass upon the validity of § 5.

We may close this topic with a quotation of the very apt comment of the District Court upon the statute. After remarking that the language of the statute "might have been extended by descriptive and illustrative words," but doubting that it would have been the more intelligible and that probably by being more restrictive might be more easily thwarted, the court said: "In view of the range of subjects which complainants claim to have already compassed, not to speak of the natural development that will ensue, it would be next to impossible to devise language that would be at once comprehensive and automatic."

In conclusion we may observe that the Ohio statute gives a review by the courts of the State of the decision of the board of censors.

Decree affirmed.

MUTUAL FILM COMPANY *v.* INDUSTRIAL COMMISSION OF OHIO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

No. 457. Argued January 6, 7, 1915.—Decided February 23, 1915.

Decided on authority of *Mutual Film Corporation* v. *Industrial Comm. of Ohio, ante*, p. 230.

THE facts are stated in the opinion.

Argued simultaneously with No. 456 by the same counsel on the same briefs.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This case was submitted with No. 456, just decided. In the latter case the complainant in the court below and appellant here was a corporation of Virginia. The appellant in the pending case is a corporation of Ohio, and counsel say "although there are some differences in the way in which their business is conducted, yet the questions involved are the same, the records in both cases are nearly identical, and the court below treated them together, rendering the one opinion to cover both." And counsel have submitted them on the same argument.

On the authority, therefore, of the opinion in No. 456, the decree is

Affirmed.

MUTUAL FILM CORPORATION OF MISSOURI *v.* HODGES, GOVERNOR OF THE STATE OF KANSAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 597. Argued January 6, 7, 1915.—Decided February 23, 1915.

Mutual Film Corporation v. *Ohio Industrial Board*, *ante*, p. 230, followed to the effect that state statutes imposing censorship on moving pictures, such as those of Ohio and Kansas of 1913, are valid exercises of the police power of those States, respectively, and do not interfere with interstate commerce, abridge the liberty of opinion, or delegate legislative power to administrative officers.

One who is not within the class specified in a state police statute as liable to penalties for violation thereof has no standing to attack the statute as unconstitutional.

One who simply imports moving pictures into a State and does not exhibit them has no standing to attack a statute subjecting only exhibitors or those permitting exhibitions to its penalties; nor can he, by asserting constitutional rights, enlarge the character of the statute and make it an interference with interstate commerce when it is a mere exercise of the police power of the State upon things already within it. *Savage* v. *Jones*, 225 U. S. 501, distinguished.

The fact that an exchange for moving pictures can more conveniently subject the films to censorship than the exhibitors can, does not give the non-exhibiting owner of an exchange a standing to attack the statute as to matters which affect only exhibitors.

APPELLANT, which we shall call complainant, it being such in the court below, is a Delaware corporation and the defendants are officers of the State of Kansas.

The bill attacks the validity of a law of Kansas censoring moving picture films and prays an injunction against its enforcement. The relief was denied and the bill dismissed. This appeal was then allowed.

The bill alleges that complainant is engaged in local and interstate commerce in the renting, leasing, selling and delivery of "'films'" in the State of Kansas and other States, which films have been and now are being used in the motion picture show business in Kansas, as well as elsewhere.

It is alleged that a film "may be a Scenario of an original story, or theatrical production, conceived by a writer or author. This is a sketch of a plot, or chief incidents of a libretto or play, a drama, a prose or poetical composition, depicting human life and conduct on a stage. It may be also a reproduction of animated objects, scenery, picturesque views or animals, and is descriptive, educational, instructive, as well as amusing."

The manner of the production of a film is stated, and that there are in the State about five hundred moving

picture theaters using the films and each theater uses an average of three films a day.

That a revenue in the shape of a tax of $2.00 is attempted to be imposed upon each film censored, which means a tax of $6.00 per day on the films sold, rented or used in each show, approximating $3,000 per day on the picture show business in the State, and making a total revenue of $40,000 for the first three months from the beginning of the enforcement of the act and thereafter a revenue of thousands of dollars to be imposed as a tax upon films printed and produced in Kansas.

That the act places a tax of about $300 a week on the films rented, hired and shipped into the State for the period of three months and about $6,000 for the first year and means thereafter a tax on the interstate commerce business of complainant, a similar tax to be imposed on all films produced and printed and sent into Kansas.

That upon the films brought into the State the duty of censorship is imposed upon the State Superintendent of Public Instruction, thereby attempting to place in him the exclusive power of censorship of all films sent into the State for use in the State and the power to review and stamp with his approval the films used, shipped or rented or sent into the State; and the act provides that no film shall be exempt until a fee of $2.00 be paid and that all fees shall be paid into the state treasury and credited to the general fund of the State. That on account of the way the business is conducted, complainant and other film exchanges must necessarily bear the expense of censorship, otherwise the amount of the charges therefor would be necessarily doubled or trebled.

The bill attacks the law for various reasons, having foundation, it is alleged, in the provisions of the Federal and state constitutions, which may be summarized as follows: The prohibition upon the State to lay an import or export duty; or to abridge the privileges and immunities

of citizens of the United States, the statute of the State offending in this as it places an embargo and prohibition upon citizens of other States in transacting a lawful business in Kansas. The statute violates the bill of rights of the United States and of the State of Kansas as it deprives of life, liberty and property without due process of law, and particularly of the freedom to say, write, or publish whatever one will on any subject, "being only responsible for all abuse of that liberty," and that there can be no abuse until it is judicially determined.

It is alleged that the Attorney General of the State threatens to enforce the act, although it seems to be charged that he is without the means to do so, and arrests have been made on information filed in one of the courts of the State.

The answer of defendants asserts in elaborate allegations the necessity of the act and of the censorship of films; that it is not primarily a revenue measure but is an exercise in good faith of the police power of the State for the protection of the public morals and that "the Legislature in its unimpeachable wisdom believed that uncensored pictures were detrimental to the morals and perversive of true education." In denial of any grievance of complainant under the act the answer alleges the following: "Answering still further defendants allege that this complainant has no interest in the act of the Kansas Legislature complained of nor does the complainant exhibit pictures to the people of Kansas in moving picture shows, or elsewhere, nor does the complainant come directly under the provisions of said act, nor can the complainant, as a Delaware corporation licensed to do business in the State of Missouri, transact interstate business within the State of Kansas either with or without the payment of an inspection fee under the act complained of, nor is the complainant liable to any criminal prosecution under the act complained of, but only the persons,

firms, partnerships, companies and corporations which actually do exhibit pictures uncensored within the State of Kansas in violation of the act. And defendants further allege that upon its own showing this complainant has brought only mere moot questions into this Honorable Court."

A hearing upon an interlocutory or temporary injunction was waived and the case heard upon its merits, one judge only sitting, the parties agreeing thereto.

Affidavits in support of the bill were filed. One of them was by an exhibitor of films within the State and showed the number of theaters owned by him, the number of films received by him and the price paid therefor and that they were manufactured elsewhere than in Kansas. It affirmed that he never exhibited nor has he ever seen exhibited indecent, immoral, obscene or sacrilegious pictures or films; that among the films exhibited by him is a film known as the "Mutual Weekly," which consists of photographs of events of current interest throughout the world. A list of the subjects represented is given.

An affidavit of one of the managers of the complainant was also filed giving an account of the production of the films and their distribution. After a detail of this by complainant and by other "film exchanges" renting out films in the State and which operate independently of complainant, it is said:

"In my opinion the only possible method of continuing the rental of film in the State of Kansas, if the proposed censorship law were to go into effect, would be for the film exchanges to procure the approval required by statute. There are a large number of motion picture exhibitors in the State of Kansas,—about five hundred (500). I do not believe it would be in any wise practicable for the exhibitors themselves to procure the approval of the different films. In the first place, the same subjects are rented from different film exchanges and are shown in

different theaters concurrently. No exhibitor would be in a position to know whether the subject had been approved or not, without submitting the same to the Superintendent of Public Instruction. The result would be that in almost every case each reel of film received by an exhibitor on rental for exhibit would have to be sent to Topeka for approval, because the exhibitor would not, at his peril, exhibit the same.

"The film exchange, on the other hand, could with less difficulty than the exhibitor ascertain whether a film had been approved or not, because the film exchange itself handles large quantities of films, and at least as to its own produce could keep track of the approval or non-approval thereof, therefore, making it absolutely necessary for this complainant, or the other film exchanges, to submit before renting out their films to their patrons in Kansas the films for approval.

"In the second place, in my opinion, no exhibitor would consent to pay the censoring charge on any particular reel, or reels of film, because he would insist that the film be rented out to some other exhibitor in Kansas before him so that some one else should pay the tax."

Mr. William B. Sanders and *Mr. Walter N. Seligsberg*, with whom *Mr. Harold T. Clark*, *Mr. Eugene Batavia* and *Mr. Jackson H. Ralston* were on the brief, for appellant.

See brief for appellants in No. 456, *ante*, p. 236.

Mr. John S. Dawson, Attorney General of the State of Kansas, and *Mr. Frank P. Lindsay*, for appellees, submitted:

The act in question is not violative of the Constitution of the United States or that of the State of Kansas. *Atkins* v. *Kansas*, 191 U. S. 207; *Adams* v. *Milwaukee*, 228 U. S. 572; *Bank* v. *Haskell*, 219 U. S. 104; *Barbier* v. *Connelly*, 113 U. S. 27; *Crowley* v. *Christiensen*, 137 U. S. 86;

Dent v. *West Virginia*, 129 U. S. 114; *Home Tel. Co.* v. *Los Angeles*, 211 U. S. 265; *In re Rahrer*, 140 U. S. 545; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Kidd* v. *Pearson*, 120 U. S. 1; *Lawton* v. *Steele*, 152 U. S. 135; *Leisey* v. *Harding*, 135 U. S. 100; *Lindsay* v. *Commissioners*, 2 Bay (S. Car.), 61; *Meffert* v. *Medical Board*, 66 Kansas, 710; *Meffert* v. *Packer &c.*, 195 U. S. 625; *Mugler* v. *Kansas*, 123 U. S. 623; *People* v. *King*, 110 N. Y. 418; *Purity Extract Co.* v. *Lynch*, 226 U. S. 193; *State* v. *Board of Med. Ex.*, 34 Minnesota, 387; *State* v. *Nelson*, 52 Oh. St. 578; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Sentell* v. *New Orleans &c. R. R.*, 166 U. S. 698; *United States* v. *D. & R. G. R. R.*, 213 U. S. 366.

The inspection fee provided for in ch. 294, Kansas, 1913, is not violative of § 10, art. I of the Federal Constitution as laying an impost or duty on picture films and reels imported into Kansas for exhibition purposes. *American Steel Co.* v. *Speed*, 192 U. S. 500; *Austin* v. *Tennessee*, 179 U. S. 343; *Brown* v. *Huston*, 114 U. S. 622; *Dooley* v. *United States*, 183 U. S. 151; *McLean* v. *D. & R. G. R. R.*, 203 U. S. 38; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345; *Pittsburg Coal Co.* v. *Louisiana*, 156 U. S. 343; *Woodruff* v. *Parham*, 8 Wall. 123.

The fee provided for in said act is not an unreasonable censor or inspection charge against such picture films or reels. *Chi., B. & Q. R. R.* v. *Cram*, 228 U. S. 70; *Commonwealth* v. *Herr*, 78 Atl. Rep. 68.

The picture films or reels are proper subjects of censor or inspection by a State before they can be exhibited to the public in such State. *Bloch* v. *Chicago*, 239 Illinois, 251; *Chicago* v. *Brownell*, 146 Illinois, 64; *Chicago* v. *Bowman Dairy Co.*, 234 Illinois, 340; *Peoria* v. *Calhoun*, 29 Illinois, 317; *Commonwealth* v. *McGunn*, 100 N. E. Rep. 337; *Gundling* v. *Chicago*, 176 Illinois, 340; *Hawthorn* v. *People*, 109 Illinois, 303; *Harrison* v. *People*, 222 Illinois, 150; *Knopf* v. *People*, 185 Illinois, 20; *Leisey* v. *Hardin*, 135 U. S. 100; *Meffert* v. *Medical Board*, 66 Kansas, 710;

Meffert v. *Packer &c.*, 195 U. S. 625; *People* v. *Creiger*, 138 Illinois, 401; *People* v. *Cooper*, 83 Illinois, 585; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Spiegler* v. *Chicago*, 216 Illinois, 114; *State* v. *State Board*, 34 Minnesota, 387; *State ex rel.* v. *Webster*, 150 Indiana, 607; *State* v. *Hathaway*, 115 Missouri, 36; *State Board* v. *Roy*, 22 R. I. 538; *Wilkins* v. *The State*, 113 Indiana, 514.

The act in question is not a revenue measure for the general fund of the State, nor is it a tax on interstate commerce in violation of § 8, Art. I of the Federal Constitution. *American Steel Co.* v. *Speed*, 192 U. S. 500; *Austin* v. *Tennessee*, 179 U. S. 351; *May* v. *New Orleans*, 178 U. S. 502; *McLean* v. *D. & R. G. R. R.*, 203 U. S. 38; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Red "C" Oil Co.* v. *North Carolina*, 222 U. S. 380; *Savage* v. *Jones*, 225 U. S. 501; *Standard Co.* v. *Wright*, 225 U. S. 540; *United States* v. *Knight*, 156 U. S. 1.

The act in question is not in contravention of § 1 of the due process clause of the Fourteenth Amendment, by imposing a fee of $2.00 per film or reel inspected under the provisions of said act. *Met. Board of Health* v. *Heister*, 37 N. Y. 661; *Cincinnati* v. *Steincamp*, 54 Oh. St. 284; *Ex parte White*, 67 California, 102; *Fire Dept.* v. *Chapman*, 10 Daly, 377; *Fire Dept.* v. *Wendell*, 37 Daly, 427; *Grant* v. *Slater M. & P. Co.*, 14 R. I. 380; *Hennessy* v. *St. Paul*, 37 Fed. Rep. 565; *Hubbard* v. *Paterson*, 45 N. J. L. 310; *In re Rahrer*, 140 U. S. 546; *Lawton* v. *Steele*, 152 U. S. 133; *Meffert* v. *Medical Board*, 66 Kansas, 70; *Mugler* v. *Kansas*, 123 U. S. 623; P. & W. Public H. & S., § 15; *Philadelphia* v. *Coulston*, 12 Phila. 182; *People* v. *King*, 110 N. Y. 418; *People* v. *D'Oench*, 111 N. Y. 359; *State* v. *Cramer*, 85 Oh. St. 349; *State* v. *Moore*, 104 N. Car. 714; *St. Paul* v. *Dow*, 37 Minnesota, 20; *Wood* v. *The State*, 42 Oh. St. 186; *Woodruff* v. *Railroad Co.*, 59 Connecticut, 63.

The act in question is not violative of § 1 of the Four-

teenth Amendment in the matter of free speech and free press, or by § 11 of the bill of rights of the constitution of Kansas. *Adams* v. *Milwaukee*, 228 U. S. 572; *Bartmeyer* v. *Iowa*, 85 U. S. 133; *Costello* v. *New Orleans*, 142 U. S. 88; *Gundling* v. *Chicago*, 177 U. S. 183; *In re Rapier*, 143 U. S. 132; *In re Horner*, 143 U. S. 570; *In re Banks*, 56 Kansas, 242; *Mahone* v. *Justice*, 127 U. S. 700; *Murphey* v. *California*, 225 U. S. 623; *New York* v. *Carr*, 199 U. S. 557; *Orient Ins. Co.* v. *Daggs*, 172 U. S. 561; *Rosenthal* v. *New York*, 226 U. S. 260; *Robertson* v. *Baldwin*, 165 U. S. 275; *Selover* v. *Walsh*, 226 U. S. 112; *Taylor* v. *Judges*, 179 U. S. 410.

The expense for approval of films would not be $39,000 for the first three months, or $25,000 for the remainder of the year; nor would the total expense to the State exceed $6,000 for the first year, or more than $3,000 per annum thereafter. *Gundling* v. *Chicago*, 177 U. S. 189; *McLean* v. *D. & R. G. R. R.*, 203 U. S. 38; *Woodruff* v. *Parham*, 75 U. S. 123.

Appellees do not admit that the films or reels contain nothing immoral, sacrilegious, or impure. *Northwestern Life Ins. Co.* v. *Riggs*, 203 U. S. 243; *Western Turf Ass'n* v. *Greensburg*, 204 U. S. 359.

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the court.

Necessarily the first factor to be considered is the law of the State. It is entitled "An Act regulating the exhibiting or using of moving picture films or reels; providing and regulating the examination and approval of moving picture films and reels, and fixing penalties for the violation of this act, and making an appropriation for clerical help to carry this act into effect."

The following are its provisions: On and after April 1, 1913, it shall be unlawful to exhibit or use any moving picture film or reel unless the same shall have been ex-

amined and approved by the Superintendent of Public Instruction. Films used in institutions of learning are exempt from the provisions of the act. It is made the duty of such officer to examine the films or reels intended for exhibition and approve such as he shall find to be moral and instructive and to withhold his approval from such as tend to debase or corrupt the morals. His approval is to be stamped in writing upon the films or reels approved. He is to keep a record of examinations made by him, noting those approved and those not approved, stating the reasons for the latter. A charge of $2.00 is to be made for each examination. He is given the power and authority to supervise and regulate the display of all moving picture films or reels in all places of amusement or elsewhere within the State, to inquire and investigate, and to have displayed for his benefit to aid him in his investigation, those which are intended to be displayed, and shall approve such as shall be moral and proper and disapprove such as are sacrilegious, obscene, indecent or immoral, or such as tend to corrupt the morals. His disapproval of any film or reel may be reviewed by a commission consisting of the Governor, Attorney General, and Secretary of State, and if they or a majority of them find the film or reel fit for exhibition it shall be approved. It is the duty of every person exhibiting or permitting to be exhibited any film or reel within the State to furnish the Superintendent of Instruction, if he require it, a description of such film or reel and a description of its scenes and purposes and to exhibit and display it for his examination and approval. Any person exhibiting or permitting to be exhibited any unapproved film or reel shall be guilty of a misdemeanor, and each liable to suit and separate fines.

It will be observed that the law makes only exhibitors or those permitting exhibitions of unapproved films liable to the penalties of the act, and, as we have seen, it is alleged by the defendants that as complainant is in neither

class, it has no standing to attack the statute. To this complainant replies that its sales are interfered with, and invokes, as sustaining its right to complain, *Savage* v. *Jones*, 225 U. S. 501. This may be; but complainant, by asserting such right, cannot enlarge the character of the statute or give to it an operation which it does not have,—cannot, for instance, make the importation of films into the State an offense under it, and not their exhibition, which only it punishes—cannot, therefore, make the act an interference with interstate commerce instead of what it is—an exercise of the police power of the State upon things within the State. Nor can it make any difference that the "exchanges can more conveniently submit the films for approval than exhibitors can."

The opinion in No. 456 becomes applicable here. Indeed, this case was argued conjointly with that and submitted on the same briefs. It is here contended that the Kansas statute has the same invalidity and for the same reasons as it was contended there that the statute of Ohio had. We need not, therefore, repeat the reasoning. It establishes that both statutes are valid exercises of the police power of the States and are not amenable to the objections urged against them—that is, do not interfere with interstate commerce nor abridge the liberty of opinion; nor are they delegations of legislative power to administrative officers.

Decree affirmed.